



PERSPECTIVES

**The New U.S.
Anti-Corruption
Strategy: What It Means
For Businesses Globally**

Our perspectives feature the viewpoints of our subject matter experts on current topics and emerging trends.

INTRODUCTION

On 6 December 2021, the Biden Administration released the U.S. Strategy on Countering Corruption (the “Strategy”), a sweeping plan of action to tackle corruption in a systematic and transnational approach. It seeks to bring focus and energy to the Administration’s fight against corruption which is established as a “core national security interest of the United States.”¹ The Strategy is both practical and aspirational, as it contains solutions that are readily actionable as well as initiatives that require intra and/or intergovernmental collaboration to implement. We are by now all too familiar with the directives set by the Foreign Corrupt Practices Act (FCPA) and its implications for international business, but what is different about the Strategy in its application and its potential ramifications?

This paper will provide context for the Strategy by first outlining the Biden Administration’s viewpoint on corruption. It will then identify the Five Strategic Pillars that support the Strategy with specific attention given to Pillar Two (Curbing Illicit Finance) and Pillar Three (Holding Corrupt Actors Accountable) which are most relevant to private sector stakeholders. The paper will also shed light on the Strategy’s intention to focus on the transnational dimensions of corruption as well as its commitment to scrutinise and hold accountable not only corrupt actors but also enablers of corruption, or “gatekeepers” such as investment advisors, lawyers, accountants, trust and company service providers, incorporators, transportation/logistics service providers, construction developers and more.

The release of the Strategy signals changes ahead that are likely to reverberate from the United States and impact a wide range of businesses globally. As such, there is a greater need for companies to be prepared for heightened scrutiny and increased enforcement by reviewing their compliance programs and routinely conducting risk assessments.

VIEW ON CORRUPTION

The Strategy is built upon the findings of an interagency review that followed the Biden Administration’s passage

of the National Security Study Memorandum (NSSM) on 3 June 2021. The NSSM begins by describing the breadth of the problems at stake. *“Corruption corrodes public trust; hobbles effective governance; distorts markets and equitable access to services; undercuts development efforts; contributes to national fragility, extremism, and migration; and provides authoritarian leaders a means to undermine democracies worldwide.”*² The memorandum set in motion a months-long examination into existing systems to identify any “persistent gaps” that hinder the U.S. Government’s fight against corruption.

The Strategy acknowledges certain deficiencies in the U.S. Government’s anti-corruption approach. It assesses that more recognition is needed on the transnational dimensions of corruption so that countermeasures can be taken on a global scale. Consequently, it calls for more information sharing and collaboration with the “most committed allies and partners.” The Strategy also points to the lack of transparency in existing corporate reporting and real estate transactions which makes it easier for money launderers to hide illicit gains. It also highlights deficiencies in holding accountable the “gatekeepers” who raise funds, advise on investments, and facilitate transactions and yet “are not required to understand the nature or source of income of their clients.”³

FIVE STRATEGIC PILLARS

The Strategy is structured around the following Five Strategic Pillars that are each intended to address different aspects of anti-corruption measures which are also mutually-reinforcing.

Pillar One: Modernizing, Coordinating, and Resourcing U.S. Government Efforts to Better Fight Corruption

This pillar declares that the U.S. Government will enhance research and data gathering in relation to corruption through better resourcing and information sharing domestically and internationally. Notable in this section is the stated intent to bring transparency in corporate

¹ The White House, FACT SHEET: Establishing the Fight Against Corruption as a Core U.S. National Security Interest (3 June 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/03/fact-sheet-establishing-the-fight-against-corruption-as-a-core-u-s-national-security-interest/>

² The White House, Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest (3 June 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-a-core-united-states-national-security-interest/>

³ The White House, United States Strategy on Countering Corruption (6 December 2021), <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>

reporting by allocating a larger budget to build a new beneficial ownership data system that can be used by authorities such as the Financial Crime Enforcement Agency (FinCEN) to investigate and take action against illicit financial transactions. It also promises more support for intergovernmental agencies such as the Financial Action Task Force (FATF) to develop policies to combat money laundering on a global scale.

Pillar Two: Curbing Illicit Finance

Pillar Two addresses the “gaps” identified by the interagency review and defines the areas where the U.S. Government intends to increase enforcement with respect to money laundering and other illicit financing. Expanding the scope of culpability is a major objective that underlies much of the Strategy. Particularly, it promises to regulate industries and professionals who not only engage in but enable corruption and money laundering activities. Below are some of the key areas where the U.S. Government is working to increase enforcement.

- *Real Estate:* The U.S. real estate market is identified as a key destination where money launderers channel their illicit proceeds. As such, the U.S. Government plans to introduce new reporting requirements to bring more transparency in real estate transactions. There are two main objectives here: restrict the means for money laundering and protect U.S. citizens from artificially inflated real estate prices.
- *Investment Advisors:* The lack of regulation to supervise hedge funds, trusts, and private equity funds is identified as a gap that needs to be addressed because these investment advisors and entities can infuse illicit funds into financial systems on behalf of corrupt actors. Setting of certain standards, such as suspicious activity reporting requirements, is being proposed to exercise more scrutiny over these advisory practices.
- *Key Gatekeepers:* Bringing more accountability to key “gatekeepers,” or professional service providers who facilitate transactions, such as lawyers, accountants, trust and company service providers, and incorporators, is an objective featured prominently in the Strategy. While the existing regulatory framework

does not require these professionals to “understand the nature or source of income of their clients,” the Strategy promises to change this by working with Congress to enhance the authority of regulators. The goal is to have those who “should have known” be penalised more effectively for facilitating illicit transactions.⁴

- *Digital Assets:* The U.S. Government promises to engage further in reviewing and assessing the risks posed by digital assets, particularly on its applications to hide or obscure movement of funds generated through illicit means.
- *Art and Antiquity Markets:* The Strategy indicates that a thorough review is already in progress to better understand how the arts and antiquity markets are being used to facilitate financial crimes globally.
- *Other Facilitators:* Curbing illicit finance also entails restricting the means of corrupt actors and money launderers to move funds through commodities such as minerals, natural resources, wildlife, arts, etc. In line with the objective to place more accountability on the enablers, the Strategy promises more scrutiny on facilitators of commodity flows, such as transportation/logistics service providers and construction developers on a global scale.

Pillar Three: Holding Corrupt Actors Accountable

How the U.S. Government plans to hold the corrupt actors accountable is introduced in two parts: first, the practical solutions that can be implemented through existing enforcement tools available, and second the aspirational initiatives that requires intra and/or intergovernmental collaboration to implement. Below are some of the key features of the two.

Practical:

The FCPA is featured prominently among the statutory tools that will be vigorously enforced to pursue the “supply side” of transnational bribery. Among the other enforcement means introduced are:

⁴ [Ibid.](#)

- the Anti-Money Laundering Act of 2020, which has enhanced the U.S. Government’s power to subpoena certain non-U.S. bank records that are kept outside of the country,
- the Kleptocracy Asset Recovery Rewards Program, which is a program that provides financial rewards to those who provide information that lead to the recovery of stolen assets kept in the U.S. financial system associated with foreign government corruption,
- the Anti-Money Laundering Act of 2020, which has further incentivised whistle-blowers to report violations of the Bank Secrecy Act to authorities through more rewards and protection, and
- the National Cryptocurrency Enforcement Team which was established in October 2021 to increase investigations into criminal activities that are facilitated through virtual currency exchanges.

Aspirational:

While the aspirational initiatives require more time and coordination to take hold, they each signal significant changes to come that are likely to have global ramifications. This is because many of the initiatives require working with allies and corruption-prone countries. For instance, the U.S. Government relies on diplomacy and similar assistance to get foreign governments to criminalize bribery on the “demand side,” the side of public officials who take bribes. Among the other global initiatives are the launch of the Democracies Against Safe Haven (DASH). This plan seeks to work with foreign partners to deny access to corrupt actors looking to hide illicit wealth in financial safe havens by imposing sanctions and visa restrictions. The U.S. Government also has made clear its intention to continue backing the FATF’s drive to bring more transparency in corporate reporting worldwide through accurate disclosure of beneficial ownership information of legal entities.

Pillar Four: Preserving and Strengthening the Multilateral Anti-Corruption Architecture

This pillar is in effect a statement of commitment by the U.S. Government to support the existing multilateral

anti-corruption architectures that are sustained by intergovernmental groups such as the Organization for Economic Cooperation and Development (OECD), the Organization of American States (OAS), the United Nations through the United Nations Conventions against Corruption (UNCAC) and NATO’s Building Integrity Program. Furthermore, this pillar also makes it clear that the U.S. Government intends to push its key allies, particularly the G7 nations as well as members of the G20, to actively engage in the transnational drive to counter corruption and money laundering. Thus, businesses around the world should be prepared for their own governments to start promoting greater transparency and accountability in both the short and long term.

Pillar Five: Improving Diplomatic Engagement and Leveraging Foreign Assistance Resources to Advance Policy Objectives

The Biden Administration has declared the battle against corruption a “core national security interest of the United States.” As such, the last pillar promises that the U.S. Government will make its anti-corruption drive a key component of its foreign policy. Accordingly, U.S. embassies will have better resources to drive the anti-corruption initiatives in methods tailored to local jurisdictions. Additionally, greater protection is promised for activists, whistle-blowers and investigative journalists who fight corruption globally. Finally, U.S. foreign assistance will be examined more closely to make sure that funds have not been diverted to benefit corrupt actors.

CONCLUSION

Each of the Five Pillars in the Biden Administration’s Strategy mandates that companies take definitive action to enjoin corruption domestically and internationally. The Administration’s focus on individual accountability will provide further incentives to management and those in corporate “C-Suites” to proactively evaluate their companies’ compliance programs and to remediate issues identified in their risk assessments.

Corporate leaders will need firms staffed with experts and former government agents who have led numerous

corruption and fraud investigations around the world to make these evaluations. To be effective, these firms should have specialists who can provide a wealth of experience in designing and refining compliance programs as well as assessing risks through business intelligence and due diligence investigations across multiple jurisdictions.

Companies should also consider the U.S. Department of Justice's use of existing laws to preclude third parties (agents, suppliers, distributors, sales agents, etc.) from soliciting bribes to obtain and/or retain business in all jurisdictions. To mitigate the risk of issues with anti-bribery provisions, companies contemplating investment in a foreign venture or a business relationship with a foreign partner or agent should conduct extensive due diligence. All aspects of the due diligence process should be documented. Furthermore, that documentation should summarize the sources consulted and the results of the review process. It is essential that due care be exercised to ensure that the firm utilized to conduct this due diligence be reputable and provide candid and accurate assessments.

Finally, companies should consider the ever-increasing cooperation and information sharing among the United States and foreign regulators when conducting internal investigations. This will require having policies and procedures in place when faced with an investigation to address misconduct when it occurs and to determine whether disclosure is required. By making a timely, candid, and incisive disclosure, a company can abate the severity, and in some instances, the likelihood of sanctions.

The Biden Administration has been clear and concise in articulating its U.S. Strategy on Countering Corruption. Companies that become complacent about designing and implementing an effective compliance program and third-party due diligence program will undoubtedly be subject to draconian fines and potential prosecution. Taking steps that align with the goals of the U.S. Strategy will not only benefit a company's reputation but also its operations globally.

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